

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BOARD OF TRUSTEES OF THE OMAHA) CASE NO. 8:18-CV-366
CONSTRUCTION INDUSTRY PENSION PLAN)
and INTERNATIONAL BRICKLAYERS &)
ALLIED CRAFTWORKERS,)
LOCAL UNION NO. 15,)
)
Plaintiffs,)
)
vs.) **COMPLAINT**
)
MCGILL RESTORATION, INC.,)
)
Defendant.)

COMES NOW the Board of Trustees for the Omaha Construction Industry Pension Plan (“Pension Plan”) and International Bricklayers & Allied Craftworkers, Local Union No. 15 (“BAC”), and for their causes of action against McGill Restoration, Inc. (“McGill”), state and allege as follows:

JURISDICTION OF VENUE

1. This Court has jurisdiction by virtue of Section 301(a) of the Labor Management Relations Act, as amended, 29 U.S.C. § 185(a), and the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Multi-Employer Pension Plan Amendments Act of 1980, 29 U.S.C. § 1132(e).

2. Venue is proper in this judicial district pursuant to 29 U.S.C. § 1132(e)(2) because the Pension Plan is administered at its principal place of business located in Omaha, Nebraska.

PARTIES

3. Plaintiff Board of Trustees are individuals who serve as trustees of the Pension Plan which is a Trust established by a collection of construction labor unions and contractors for

the purposes of providing and administering a pension program for construction employees represented by various unions, including BAC. The Pension Plan as administered, provides death, disability and retirement benefits to construction employees including certain employees of McGill. The Trust is organized pursuant to the provisions of § 302 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 186.

4. Plaintiff BAC is a labor organization representing employees in an industry affecting commerce as defined by the Labor Management Relations Act of 1947, as amended, and has acted as a collective bargaining agent for employees who perform construction work for McGill.

5. McGill is a corporation organized and existing pursuant to the laws of the State of Nebraska and is located at 2821 Grebe Street, Omaha, Nebraska 68112. McGill is an employer as defined by the Labor Management Relations Act of 1974, as amended, engaged in commerce and in an industry affecting commerce as that term is defined in Section 2 of the Labor Management Relations Act.

CLAIM FOR RELIEF

6. In 2011 and 2012, McGill entered into successive collective bargaining agreements with the International Bricklayers & Allied Craftworkers, Local Union No. 1 (“BAC No. 1”) which required McGill to make contributions to the Pension Plan for each hour worked for McGill’s employees that were covered under the collective bargaining agreements. At all applicable times, employees of McGill performed work covered by the collective bargaining agreements and the Pension Plan referred to herein.

7. In January 2014, BAC No. 1 merged into Plaintiff BAC No. 15. BAC No. 15 became the successor to the collective bargaining agreements formerly and currently in effect with McGill.

8. McGill has breached the provisions of the applicable collective bargaining agreements by failing and/or refusing to pay all pension contributions becoming due on behalf of its employees from 2013 to the present. The failure to pay contributions is in direct violation of the collective bargaining agreements and is without justification. Plaintiffs are unable to determine the total amount of contributions owed by McGill without an auditing of the books and records of McGill covering the period from 2013 to the present.

9. Plaintiffs have performed all of their obligations for purposes of enforcing the collective bargaining agreements and McGill's obligation to pay contributions to the Pension Plan.

10. Plaintiffs are without an adequate remedy at law and will suffer immediate, continuing and irreparable injury, loss and damage unless McGill is ordered to specifically perform all contractual obligations on McGill's part which are required to be performed as referenced herein.

11. McGill's breach of the collective bargaining agreements by refusing to pay contributions to the Pension Plan has resulted in damages and losses sustained by the Plaintiffs.

WHEREFORE, Plaintiffs request the following relief:

a. An Order granting specific performance of the collective bargaining agreements and allowing Plaintiffs or their designee to perform a complete audit of McGill's payroll and payroll-related records;

- b. Judgment against McGill for all amounts due as contributions to the Pension Plan;
- c. Reasonable attorney's fees, audit costs, prejudgment interest and costs incurred in accordance with the terms of the parties' agreements and 29 U.S.C. § 1132(g)(2)(D) of ERISA;
- d. Liquidated damages in accordance with the terms of the parties' agreements and 29 U.S.C. § 1132(g)(2)(c) of ERISA;
- e. Such other and further legal and equitable relief as this Court deems just and proper, including but not limited to all such auditing costs.

Dated this 1st day of August 2018.

BOARD OF TRUSTEES OF THE OMAHA
CONSTRUCTION INDUSTRY PENSION
PLAN and INTERNATIONAL
BRICKLAYERS & ALLIED
CRAFTWORKERS, LOCAL 15,
Plaintiffs,

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